

## **MINUTES**

### **MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON RULES**

**Call to Order:** By **CHAIRMAN FRED THOMAS**, on February 14, 2003 at 5:30 P.M., in Room 311 A Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Fred Thomas, Chairman (R)  
Sen. Bob Keenan, Vice Chairman (R)  
Sen. Vicki Cocchiarella (D)  
Sen. Jon Ellingson (D)  
Sen. Jim Elliott (D)  
Sen. Duane Grimes (R)  
Sen. Dan McGee (R)  
Sen. Corey Stapleton (R)  
Sen. Emily Stonington (D)  
Sen. Bob Story Jr. (R)  
Sen. Jon Tester (D)

**Members Excused:** Sen. Walter McNutt (R) proxy

**Members Absent:** None.

**Staff Present:** Greg Petesch, Legislative Branch  
Fredella D. Haab, Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: Point of Privilege, 2/14/2003

**CHAIRMAN FRED THOMAS, SD 32, STEVENSVILLE** stated that **SEN. JIM ELLIOTT, SD 36, TROUT CREEK**, had concern that there was a conflict of interest with a bill he had before the Public Health Committee and **SEN. JERRY O'NEIL, SD 42, COLUMBIA FALLS**, had a predisposed position on it. He was not sure of the exact process and procedure but wanted them to meet to absolve this issue and see if we would recommend it to the Ethics Committee. In our

rules if there was an issue, the Rules Committee refers it to the Ethics Committee.

**SEN. ELLIOTT** said he didn't know what the procedure was for this either. He said he was satisfied that **SEN. O'NEIL** did not commit any ethical breach, and he didn't know if he could withdraw his motion at this late of date.

**Mr. Greg Petesch, Legislative Services**, said he cannot withdraw a motion made on the floor.

**CHAIRMAN THOMAS** said he didn't know if a motion was made.

**PRES. BOB KEENAN, SD 38, BIGFORK** stated it was really a motion.

**Mr. Petesch** stated the Rules provide for senator may request a convening of a committee for this purpose.

**CHAIRMAN THOMAS** asked **SEN. ELLIOTT** if he were in essence saying, he had no issue at this point and time.

**SEN. ELLIOTT** said he had no issue at this point.

**CHAIRMAN THOMAS** asked **SEN. ELLIOTT** to make a motion to that effect. There was no issue that needed to be discussed or referred to the Ethics Committee.

**Motion/Vote:** **SEN. ELLIOTT** moved **THAT HIS COMPLAINT OF AN ETHICAL VIOLATION OF SEN. O'NEIL BE DISMISSED.** Motion carried 12-0.

**SEN. WALTER MCNUTT** proxy by **CHAIRMAN THOMAS** was aye.

**SEN. COREY STAPLETON, SD 10, BILLINGS**, thought perhaps in the future, maybe they could make a change in our Rules. He would, as a result of this, want to know if it was true that it was only in our Joint Rules that they addressed conflict of interests?

**Mr. Petesch** said it was addressed in 2-2-112.

**SEN. STAPLETON** suggested a narrow definition in the future of a conflict of interest, and who should declare a conflict of interest. He thought if someone does have a conflict of interest, they ought to be given an opportunity to disclose that to the body and not on the Senate floor in the Committee of the Whole. The first time the body hears of this should not be in the form of an allegation. Certainly not one that later on was absolved or not even an issue. If a member thought another member had a conflict of interest, there could be a mechanism through the floor leaders to handle this.

**Secretary of the Senate, Rosana Skelton, Helena,** said the Joint Rule 10-60 states, "A member who has a personal or private interest in any measure or bill proposed or pending before the Legislature shall disclose the fact to the house to which the member belongs."

**CHAIRMAN THOMAS** stated that this did not reflect in this scenario, because in this instance it was an allegation of a conflict of interest instead of a member disclosing they had a potential conflict of interest.

**SEN. ROBERT STORY, SD 12, PARK CITY,** questioned when it could be done?

**Mr. Petesch** said the statute provides that you are to disclose the conflict prior to participating in action on the measure. You must do it before you vote.

**CHAIRMAN THOMAS** stated you would not conduct a hearing but vote in executive action or on the floor.

**SEN. ELLIOTT** answered that it seemed from what **Mr. Petesch** said was, "acting on the measure."

**Mr. Petesch** answered, "participating in official action on the measure."

**SEN. ELLIOTT** said participating on official action on the measure would include speaking on the motion concerning the bill.

**Mr. Petesch** said if there was a motion pending, that was an official action.

**SEN. O'NEIL** said if his daughter had not been a licensed massage therapist and if she had been practicing in Montana when **SEN. ELLIOTT** asked me if I objected to transferring the bill and he told him that my daughter was a massage therapist; would that have been disclosing the conflict or would that have been an ethical violation?

**CHAIRMAN THOMAS** said a public acknowledgment of a conflict was the only way you would be disclosing a conflict of interest. Disclosing it to the public on the floor or in a committee setting would satisfy that requirement.

**SEN. O'NEIL** denied a conflict of interest, but admitted he was undiplomatic. Where should he have said he had a conflict if he had one?

**CHAIRMAN THOMAS** said he could have done it at any time on the floor. When that issue arose on the floor, he could have hung onto the bill, or if he felt he had a conflict of interest, he could have acknowledged it at that point and time. That would have been the appropriate time because the issue was before the body.

**SEN. VICKI COCCHIARELLA, SD 32, MISSOULA**, suggested no conflict had occurred. If the legislator himself was not a member of the class (therapists), there was no conflict to listen to other people even if they were close associates. She felt that only if **SEN. O'NEIL** had been the only massage therapist benefitting from the bill would it have to be disclosed.

**CHAIRMAN THOMAS** said there was a lack of communication in this circumstance.

**SEN. ELLIOTT** believed at the time there had been a conflict of interest that had not been disclosed. Through further communication with **SEN. O'NEIL**, he believed that was not the case.

**CHAIRMAN THOMAS** said that was the purpose of our meeting.

**SENATOR JON ELLINGSON, SD 33, MISSOULA**, said continuing to use this as an example for discussion, had there been a conflict of interest and the conflict had not been disclosed and **SEN. ELLIOTT** gave his motion to move it from committee, then we are presented with the question of the appropriateness of him making reference to the conflict that had not been disclosed at the time of his motion. Certainly we are encouraged to disclose our conflicts, but the question arises if we don't disclose our conflicts. If that conflict, not having been disclosed may affect one of our bills, then as unpleasant as it is, he thought it was appropriate for another person to raise the issue of conflict. It would be nice not to do it on the floor but he didn't think they were left with any other alternative.

**CHAIRMAN THOMAS** concurred with **SEN. ELLINGSON**, but stated that the concern over a possible conflict of interest had never been voiced to him. He agreed with **SEN. STAPLETON**, saying the appropriate measure would be to notify floor leaders and the Senate PRES. so that these serious allegations could be examined.

**SEN. DUANE GRIMES, SD 20, CLANCY**, asked for an appropriate procedure if **SEN. ELLIOTT** had perceived a veiled threat, theoretically, from a Committee Chairman (**SEN. O'NEIL**) if he'd threatened to kill the bill in a personal vendetta for personal

reasons. He wondered if there were an alternative recourse to rising on personal privilege.

**SEN. ELLIOTT** believed that was covered in the statutes. He continued out of the code book, 2-2-112, sub 3c, "whether the legislator's participation was likely to have any significant effect on the disposition of the matter in (a) of that section whether the conflicts impedes the legislator's independence of judgment." He was incorrect in assuming that a threat or a veiled threat was included in here.

**CHAIRMAN THOMAS** stated that where a conflict didn't exist under our ethics area, ethical use or to threaten a use of a senator's position for personal or personal business benefit or advantage, was covered in S30-130.

**SEN. GRIMES** stated if that were the case then they would be meeting to decide whether it was for personal or personal business.

**CHAIRMAN THOMAS** said it would be referred to the Ethics Committee if they found an issue to be further examined.

**SEN. DAN MCGEE, SD 11, LAUREL**, said having served last time as Speaker of the House, there were three instances where ire was raised and people dashed around in a reactive mode and made accusations and signed petitions and did all kinds of things. Without exception, he believed they were done in the heat of battle, and all of them were without substance in the end. What was also common was that they surprised the leadership. Just as **SEN. STAPLETON** said, whatever happened, happened with whom right now. It was hard not to get caught up in the immediate emotion and he thought everybody here had seen me do that, so he was not trying to preach. What he was simply saying was he agreed with **SEN. STAPLETON** that the best thing they can do was a matter of procedure in the Senate or in the Legislature as a whole, was to try diligently to use the process of the Rules and the leadership and if that does not yield us what they are looking for, then by all means they have to use their personal privilege.

**SEN. ELLIOTT** said at the time the motion was made, with the information available to him, he felt he was entirely within his rights as a member of the Senate to make the motion, and felt the Rules would back his decision.

**SEN. MCGEE** stated that he was not arguing that. At any time a senator wants to do those things, they certainly had the privileges of the rules to allow them to do that. He spoke as one who had been in leadership and had these things come up very

quickly. In the House situation, he knew of two cases, the entire protocol of the House had to be amended so that they could address those issues. He did not suggest, **SEN. ELLIOTT**, that in any way did he do anything wrong. His point was simply: if he ever had the same issue he would present it to the floor leadership. Leadership could try to satisfy the situation if possible and if not, he still had his privileges as a member of the Senate.

**SEN. O'NEIL** agreed with **SEN. ELLIOTT**. If somebody asked him in the future, he would be more diplomatic. Was it proper not to move it because he didn't like a bill.

**CHAIRMAN THOMAS** said you just assure them you will give it a fair hearing.

**SEN. COCCHIARELLA** had a problem with the playing field when it was said that somehow they had to go to the leadership to resolve an issue if the leadership was the majority party and you were in the minority. She hated for them to make a rule that might put in place a process in the future that if they didn't go to the leadership then you didn't get to do it.

**SEN. STAPLETON** said he actually agree with **COCCHIARELLA**, and no, he had not served in the minority but it seemed he spent half of his issues in the minority he understood. Honor was party blind. The honor of the body and the honor of each of us individually. Perhaps all it would be was a member to member saying they had a problem with this and give somebody the opportunity to disclose it.

**SEN. ELLIOTT** believed that he had been sufficiently apprised of this issue and believed it to be a conflict of interest.

**CHAIRMAN THOMAS** said he understood and there was no notice required in our rules. It was an unfortunate situation and thought the record would reflect that there was nothing found in the committee to generate any interest.

**SEN. O'NEIL** agreed but wanted to know wh he should have done if his daughter was practicing and not licensed in Montana and that bill had affected her?

**CHAIRMAN THOMAS** said he could have conducted the hearing. He could have acknowledged at the hearing that he had a conflict or he felt he had a conflict.

**SEN. O'NEIL** said he wasn't given a chance to do that before he asked me to move the bill.

**CHAIRMAN THOMAS** said that didn't matter. In the future if you felt you had a conflict on a bill, and it was on the floor for the very first time, you are to acknowledge it to the public, that you felt you had a conflict of interest on this bill. You are to vote on it as well in committee and on the floor. If you felt you really had a conflict as a chairman you should probably have a vice chair conduct that hearing.

**Secretary Skelton** had a question on a bill today that passed a second reading and then went from third to the committee. If she had to put those bills back on second, they had to be printed again and looked for guidance on this situation.

**CHAIRMAN THOMAS** said the first rule we identified was that any bill or all bills and resolutions be reported by committee and accepted by the Senate must be reproduced on schedule for consideration of the Committee of the Whole. If the committee reported it out again then that rule applies.

**Secretary Skelton** says it had to be put on second reading again but it was and so that was my question. It was considered on second reading in that form and she couldn't find the rule that says it has to be considered again on second reading in the same form that it has been read. It seems redundant and wasteful.

**Mr. Petesch** said it was redundant after it has passed second reading and referred to a committee again.

**Secretary Skelton** asked if what they did today if was it was an illegal act?

**Mr. Petesch** said it was not illegal. It was a violation of your rules.

**CHAIRMAN THOMAS** stated S30-70, 6, "measures taken from a committee and brought to the Senate floor for debate on second reading on that day without a committee recommendation, the bill does not include amendments formally adopted by the committee," it speaks to the fact.

**Secretary Skelton** asked if it was blasted out of committee, would it go to second reading?

**CHAIRMAN THOMAS** said any scenario and it would still go to second reading.

**ADJOURNMENT**

Adjournment: 6:00 P.M.

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SEN. FRED THOMAS, Chairman

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Fredella D. Haab, Secretary

FT/FH

**EXHIBIT** (rus33aad)